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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Michelle Paynton,

Plaintiff,

vs.

American Fresh Food LLC, an Arizona
limited liability company, **Hussein H.
Baiz and Jane Doe Baiz**, a Married
Couple, **Adnan H. Baiz and Jane Doe
Baiz II**, a Married Couple, and **Abbas
Baiz and Jane Doe Baiz III**, a Married
Couple,

Defendants.

No.

VERIFIED COMPLAINT

Plaintiff, Michelle Paynton (“Plaintiff” or “Michelle Paynton”), sues the
Defendants American Fresh Food LLC, Hussein H. Baiz and Jane Doe Baiz, Adnan H.
Baiz and Jane Doe Baiz II, and Abbas and Jane Doe Baiz III (“Defendants” or “Baiz
Fresh Foods”) and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid minimum wages, liquidated damages,
attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29

1 U.S.C. § 201, et seq.; unpaid minimum wage under the Arizona Minimum Wage Act
2 (“AMWA”), Arizona Revised Statutes (“A.R.S.”) Title 23, Chapter 2, Article 8; and
3 unpaid wages under the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 2, Article
4 7.

5
6 2. The FLSA was enacted “to protect all covered workers from substandard
7 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
8 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
9 minimum wage of pay for all time spent working during their regular 40-hour
10 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-
11 exempt employees an overtime rate of pay for all time spent working in excess of 40 hours
12 in a given workweek. See 29 U.S.C. § 207(a).

13
14 3. The AMWA, A.R.S. § 23-363, et seq., establishes a minimum wage within
15 the State of Arizona.

16
17 4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage
18 payments to employees within the State of Arizona.

19 **JURISDICTION AND VENUE**

20
21 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
22 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
23 the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §
24 1367 because the state law claims asserted herein are so related to claims in this action
25 over which this Court has subject matter jurisdiction that they form part of the same case
26 or controversy under Article III of the United States Constitution.
27

1 the company's employees, Defendant American Fresh Food LLC is subject to liability
2 under the FLSA.

3 11. Defendants Hussein H. Baiz and Jane Doe Baiz are, upon information and
4 belief, husband and wife. They have caused events to take place giving rise to the claims
5 in this Complaint as to which their marital community is fully liable. Defendants
6 Hussein H. Baiz and Jane Doe Baiz are owners of Baiz Fresh Foods and were at all
7 relevant times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).
8

9 12. Under the FLSA, Defendants Hussein H. Baiz and Jane Doe Baiz are
10 employers. The FLSA defines "employer" as any person who acts directly or indirectly
11 in the interest of an employer in relation to an employee. At all relevant times,
12 Defendants Hussein H. Baiz and Jane Doe Baiz had the authority to hire and fire
13 employees, supervised and controlled work schedules or the conditions of employment,
14 determined the rate and method of payment, and maintained employment records in
15 connection with Plaintiff's employment with Defendants. As persons who acted in the
16 interest of Baiz Fresh Foods in relation to the company's employees, Defendants Hussein
17 H. Baiz and Jane Doe Baiz are subject to individual liability under the FLSA.
18

19 13. Defendants Adnan H. Baiz and Jane Doe Baiz II are, upon information and
20 belief, husband and wife. They have caused events to take place giving rise to the claims
21 in this Complaint as to which their marital community is fully liable. Defendants Adnan
22 H. Baiz and Jane Doe Baiz II are owners of Baiz Fresh Foods and were at all relevant
23 times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).
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1 14. Under the FLSA, Defendants Adnan H. Baiz and Jane Doe Baiz II are
2 employers. The FLSA defines “employer” as any person who acts directly or indirectly
3 in the interest of an employer in relation to an employee. At all relevant times,
4 Defendants Adnan H. Baiz and Jane Doe Baiz II had the authority to hire and fire
5 employees, supervised and controlled work schedules or the conditions of employment,
6 determined the rate and method of payment, and maintained employment records in
7 connection with Plaintiff’s employment with Defendants. As persons who acted in the
8 interest of Baiz Fresh Foods in relation to the company’s employees, Defendants Adnan
9 H. Baiz and Jane Doe Baiz II are subject to individual liability under the FLSA.
10

11 15. Defendants Abbas Baiz and Jane Doe Baiz III are, upon information and
12 belief, husband and wife. They have caused events to take place giving rise to the claims
13 in this Complaint as to which their marital community is fully liable. Defendants Abbas
14 Baiz and Jane Doe Baiz III are owners of Baiz Fresh Foods and were at all relevant times
15 Plaintiff’s employers as defined by the FLSA, 29 U.S.C. § 203(d).
16

17 16. Under the FLSA, Defendants Abbas Baiz and Jane Doe Baiz III are
18 employers. The FLSA defines “employer” as any person who acts directly or indirectly
19 in the interest of an employer in relation to an employee. At all relevant times,
20 Defendants Abbas Baiz and Jane Doe Baiz III had the authority to hire and fire
21 employees, supervised and controlled work schedules or the conditions of employment,
22 determined the rate and method of payment, and maintained employment records in
23 connection with Plaintiff’s employment with Defendants. As persons who acted in the
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1 interest of Baiz Fresh Foods in relation to the company's employees, Defendants Abbas
2 Baiz and Jane Doe Baiz III are subject to individual liability under the FLSA.

3 17. Plaintiff is further informed, believes, and therefore alleges that each of the
4 Defendants herein gave consent to, ratified, and authorized the acts of all other
5 Defendants, as alleged herein.
6

7 18. Defendants, and each of them, are sued in both their individual and
8 corporate capacities.

9 19. Defendants are jointly and severally liable for the injuries and damages
10 sustained by Plaintiff.
11

12 20. At all relevant times, Plaintiff was an "employee" of Defendants as defined
13 by the FLSA, 29 U.S.C. § 201, *et seq.*

14 21. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
15 Defendants.
16

17 22. At all relevant times, Defendants were and continue to be "employers" as
18 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

19 23. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
20 Defendants.
21

22 24. At all relevant times, Plaintiff was an "employee" of Defendants as defined
23 by A.R.S. § 23-362.

24 25. At all relevant times, Defendants were and continue to be "employers" of
25 Plaintiff as defined by A.R.S. § 23-362.
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1 26. Defendants individually and/or through an enterprise or agent, directed and
2 exercised control over Plaintiff's work and wages at all relevant times.

3 27. Plaintiff, on information and belief, in her work for Defendants, was
4 employed by an enterprise engaged in commerce that had annual gross sales of at least
5 \$500,000 in 2022.
6

7 28. Plaintiff, on information and belief, in her work for Defendants, was
8 employed by an enterprise engaged in commerce that had annual gross sales of at least
9 \$500,000 in 2023.
10

11 29. At all relevant times, on information and belief, Plaintiff, in her work for
12 Defendants, was engaged in commerce or the production of goods for commerce.

13 30. At all relevant times, Plaintiff, in her work for Defendants, was engaged in
14 interstate commerce.
15

16 31. Plaintiff, in her work for Defendant, regularly handled goods produced or
17 transported in interstate commerce.

18 **FACTUAL ALLEGATIONS**

19 32. Defendants own and/or operate as Baiz Fresh Foods, an enterprise doing
20 business in Maricopa County, Arizona, that is a local chain of grocery stores.
21

22 33. At all relevant times, Plaintiff worked for Defendants in the Phoenix
23 Metropolitan Area.

24 34. Plaintiff was hired by Defendants and began working in approximately
25 early January 2024.
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1 35. At all relevant times, Plaintiff worked a single shift for Defendants through
2 approximately early January 2024.

3 36. At all relevant times, Plaintiff worked for Defendants at the Baiz Fresh
4 Foods store located at 1858 West Baseline Road, Mesa, AZ 85202.

5 37. At all relevant times, in her work for Defendants, Plaintiff worked as a
6 produce section team member for Defendants.
7

8 38. Defendants, in their sole discretion, paid, or were supposed to pay, Plaintiff
9 an hourly rate of approximately \$15.
10

11 39. On information and belief, Plaintiff was supposed to be paid on a biweekly
12 basis.

13 40. Defendants classified Plaintiff as W-2 employee.

14 41. In Plaintiff's sole workweek, she worked a single shift of approximately
15 eight hours for Defendants.
16

17 42. Defendants did not pay Plaintiff any wages whatsoever for her sole
18 workweek of employment with Defendants.

19 43. Defendants never paid Plaintiff for sole workweek of employment with
20 them.
21

22 44. On or about January 17, 2024, shortly after the end of her employment,
23 Plaintiff contacted her store manager, David (last name unknown), via text message in
24 order to obtain payment for the work she had performed.
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1 45. In the text message exchange between Plaintiff and David (last name
2 unknown), Plaintiff requested that the check be mailed to her home, and she provided a
3 mailing address for Defendants to send the check.

4 46. On information and believe, the check was never sent to Plaintiff.

5 47. Plaintiff never received a check from Defendants for the time she suffered
6 or permitted her to perform work for them.

7 48. Thereafter, Plaintiff continued to reach out to David (last name unknown).

8 49. In response, David (last name unknown) acknowledged that the check had
9 not been sent but promised that it would be soon.

10 50. However, on information and belief, that check was never sent.

11 51. To date, Defendants have still paid no wages whatsoever to Plaintiff for
12 such time worked.

13 52. As a result of not having paid any wages whatsoever to Plaintiff for her sole
14 workweek of work with Defendants, Defendants failed to pay the applicable minimum
15 wage to Plaintiff.

16 53. As a result of Defendants' failure to compensate Plaintiff any wage
17 whatsoever for such hours worked, Defendants violated 29 U.S.C. § 206(a).

18 54. As a result of Defendants' failure to compensate Plaintiff any wage
19 whatsoever for such hours worked, Defendants violated the AMWA, ARS § 23-363.

20 55. As a result of Defendants' failure to compensate Plaintiff wages due and
21 owing in her penultimate and final workweeks, Defendants violated the AWA, ARS §
22 23-350, et seq.

1 56. At all relevant times, in her work for Defendants, Plaintiff was a non-
2 exempt employee.

3 57. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
4 of her rights under the FLSA.

5 58. Plaintiff is a covered employee within the meaning of the FLSA.

6 59. Defendants individually and/or through an enterprise or agent, directed and
7 exercised control over Plaintiff's work and wages at all relevant times.
8

9 60. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
10 from Defendants compensation for unpaid minimum wages, an additional amount equal
11 amount as liquidated damages, interest, and reasonable attorney's fees and costs of this
12 action under 29 U.S.C. § 216(b).
13

14 61. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
15 from Defendants compensation for unpaid wages, an additional amount equal to twice the
16 unpaid minimum wages as liquidated damages, interest, and reasonable attorney's fees
17 and costs of this action under ARS § 23-363.
18

19 62. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
20 from Defendants compensation for unpaid wages, to be proven at trial, in an amount that
21 is treble the amount of the unpaid wages, plus interest thereon, and costs incurred under
22 ARS § 23-355.
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COUNT ONE: FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE

63. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

64. As a result of not paying Plaintiff any wage whatsoever for the sole workweek of her employment, Defendants failed or refused to pay Plaintiff the FLSA-mandated minimum wage.

65. Defendants' practice of failing or refusing to pay Plaintiff at the required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

66. Plaintiff is therefore entitled to compensation for the full applicable minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

WHEREFORE, Plaintiff, Michelle Paynton, respectfully requests that this Court grant the following relief in Plaintiff's favor, and against Defendants:

- A. For the Court to declare and find that the Defendants violated minimum wage provisions of the FLSA, 29 U.S.C. § 206(a) by failing to pay proper minimum wages;
- B. For the Court to award Plaintiff's unpaid minimum wage damages, to be determined at trial;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest;

1 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
2 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
3 forth herein;

4 F. Such other relief as this Court shall deem just and proper.
5

6 **COUNT TWO: ARIZONA MINIMUM WAGE ACT**
7 **FAILURE TO PAY MINIMUM WAGE**

8 67. Plaintiff realleges and incorporates by reference all allegations in all
9 preceding paragraphs.

10 68. As a result of not paying Plaintiff any wage whatsoever the sole workweek
11 of her employment, Defendants failed or refused to pay Plaintiff the Arizona minimum
12 wage.
13

14 69. Defendants' practice of failing or refusing to pay Plaintiff at the required
15 minimum wage rate violated the AMWA, 23-363.

16 70. Plaintiff is therefore entitled to compensation for the full applicable
17 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
18 twice the underpaid wages as liquidated damages, together with interest, reasonable
19 attorney's fees, and costs.
20

21 **WHEREFORE**, Plaintiff, Michelle Paynton, respectfully requests that this Court
22 grant the following relief in Plaintiff's favor, and against Defendants:
23

24 A. For the Court to declare and find that the Defendants violated minimum
25 wage provisions of the AMWA, A.R.S. § 23-363 by failing to pay proper
26 minimum wages;
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- 1 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
2 determined at trial;
- 3 C. For the Court to award compensatory damages, including liquidated
4 damages pursuant to A.R.S. § 23-364, to be determined at trial;
- 5
- 6 D. For the Court to award prejudgment and post-judgment interest;
- 7 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
8 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
9 herein;
- 10
- 11 F. Such other relief as this Court shall deem just and proper.

12 **COUNT THREE: ARIZONA WAGE ACT**
13 **FAILURE TO PAY WAGES DUE AND OWING**
14 **DEFENDANT AMERICAN FRESH FOOD LLC, ONLY**

15 71. Plaintiff realleges and incorporates by reference all allegations in all
16 preceding paragraphs.

17 72. As a result of the allegations contained herein, Defendant American Fresh
18 Food LLC did not compensate Plaintiff wages due and owing to her.

19 73. Defendant American Fresh Food LLC engaged in such conduct in direct
20 violation of A.R.S. § 23-350.

21

22 74. Defendant American Fresh Food LLC acted unreasonably and in bad faith
23 in failing to pay Plaintiff the wages due and owing to her.

24 75. Defendant American Fresh Food LLC sought to delay payment without
25 reasonable justification and to defraud Plaintiff of wages earned.
26

1 76. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
2 for the final bi-weekly pay period of her employment with Defendant American Fresh
3 Food LLC.

4 77. Plaintiff is therefore entitled to compensation for unpaid wages, to be
5 proven at trial, in an amount that is treble the amount of the unpaid wages, plus interest
6 thereon, and costs incurred.
7

8 **WHEREFORE**, Plaintiff, Michelle Paynton, requests that this Court grant the
9 following relief in Plaintiff's favor, and against Defendant American Fresh Food LLC:
10

- 11 A. For the Court to declare and find that the Defendant American Fresh Food
12 LLC violated the unpaid wage provisions of A.R.S. § 23-350, et seq., by
13 failing to pay wages due and owing to Plaintiff;
14 B. For the Court to award an amount that is treble Plaintiff's unpaid wages
15 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
16 C. For the Court to award prejudgment and post-judgment interest on any
17 damages awarded;
18 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
19 the action and all other causes of action set forth in this Complaint; and
20 E. Such other relief as this Court deems just and proper.
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23 **JURY TRIAL DEMAND**

24 Plaintiff hereby demands a trial by jury on all issues so triable.
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1 RESPECTFULLY SUBMITTED this 14th day of March, 2024.

2 BENDAU & BENDAU PLLC

3 By: /s/ Clifford P. Bendau, II

4 Clifford P. Bendau, II

5 Christopher J. Bendau

6 *Attorneys for Plaintiff*

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VERIFICATION

Plaintiff, Michelle Paynton, declares under penalty of perjury that she has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on her personal knowledge, except as to those matters stated upon information and belief, and, as to those matters, she believes them to be true.


Michelle Paynton